IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 20312 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MOHMAD IRFAN @ SALIM S/O. YUNUSBHAI NURANI (MEMON) - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR MA BUKHARI for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,
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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 18/11/2005

ORAL JUDGMENT

1. Mohmad Irfan alias Salim S/o. Yunusbhai Nurani (Memon)has filed this habeas corpus petition

praying to quash and set aside the order of detention dated 13.09.2005 passed by Commissioner of Police, Ahmedabad city. The present petition was filed on 4th October, 2005 and my learned brother Mr. Justice A.S. Dave issued **RULE** on 10th October, 2005. The rule was made returnable after four weeks, and therefore, the matter is placed before this Court.

2. Mr. M.A. Bukhari, learned Advocate for the petitioner invited my attention to the order of detention dated 13.09.2005 and also grounds supplied therein which reveals six criminal cases registered against the petitioner. The first incident is registered with Ellis-bridge police station being C.R. No.127 of 2005 dated 28.02.2005 registered under Section 379 and 114 of I.P.C. in connection with the theft of 'Bajaj Super' scooter valued at Rs.3000/-. The second incident is also registered with Ellis-bridge police station being C.R. No.276 of 2005 dated 29.04.2005 registered under Section 379 and 114 for theft of scooter valued at Rs.3000/-. The third incident is registered with Ellis-bridge police station being C.R. No.412 of 2005 dated 22.06.2005

registered under Section 379 and 114 for theft of scooter valued at Rs.3000/-. The fourth incident is also registered with Ellis-bridge police station being C.R. No.521 of 2005 dated 02.08.2005 registered under Section 379 and 114 for theft of scooter valued at Rs.2000/-. The fifth incident is registered with Ellis-bridge police station being C.R. No.564 of 2005 dated 14.08.2005 registered under Section 379 and 114 for theft of scooter valued at Rs.3000/-. The sixth incident is also registered with Ellis-bridge police station being C.R. No.575 of 2005 dated 17.08.2005 registered under Section 379 and 114 for theft of 'Bajaj Super' scooter valued at Rs.4000/-.

3. Learned Advocate for the petitioner further invited my attention to the provisions of PASA Act, particularly, Section 3 of the Act which provides for passing of order of detention on certain grounds. Learned Advocate further submitted that before passing such order, detaining authority must arrive at subjective satisfaction that the activities of petitioner is prejudicial to maintenance of 'public order'. Learned Advocate submitted that on the basis

of allegations which have been leveled by the detaining authority without any material on record and subjective satisfaction arrived at by the detaining authority in passing the order of detention is illegal, null, void and deserves to be quash and set aside.

4. Learned Advocate for the petitioner has relied upon the judgment of the apex Court in the case of Darpan Kumar Sharma alias Dharban Kumar Sharma Vs. State of Tamil Nadu and others reported in AIR 2003 SC 971, particularly, on Para 5 and 6 of the said judgment.

5. Learned Advocate for the petitioner has also relied upon division bench judgment of this Court in the case of Ashokbhai Jivraj alias Jivabhai Solanki Vs. Police Commissioner, Surat & Others reported in 2001 (1)GLH 393, and particularly, on Para 22 of the said judgment. He has also placed reliance on the judgment of this Court in the case of Janak alias Jayesh Amrutlal Panchal Vs. State of Gujarat dated 20th April, 2005.

6. Mr. Gohil, learned A.P.P. for respondent has tried to defend the order of detention passed by the detaining authority and for this he has placed reliance on affidavit-in-reply field by Mr. K.R. Kaushik, Commissioner of Police, Ahmedabad city in this behalf which reads as under,

> "I have formulated the grounds of detention and all those grounds are true, correct, clear and proper. I say that in the present case, amongst the relevant materials I have carefully examined the documents relating to the 7 cases registered against the detenu and from those materials and from the statements of witnesses, it is clear that the detenu falls within the definition of "dangerous person" as defined u/s.2(c) of the PASA Act. Therefore, on carefully scrutinizing,studying, examining and considering the materials placed before me including the papers pertaining to the above cases and statements of witnesses and after applying my mind to the facts of the case, I came to the conclusion after

subjectively satisfying myself that the detenu is a head-strong and dangerous person and his anti-social and criminal activities are directly or indirectly causing and are likely to cause harm, danger and alarm of insecurity among the general public or section thereof and he is thus disturbing the public order and public peace and there is also grave or wide-spread danger to life and property. Therefore, with a view to immediately prevent him from continuing his anti-social and criminal activities in any manner prejudicial to the maintenance of 'public order', after satisfying that such activities of the detenu cannot be curbed or prevented immediately by resorting to action under the ordinary law, as a preventive measure, I have passed the order of detention against the detenu with full application of mind and in compliance and in consonance with the provisions of the PASA Act as well as the constitution of India and the said order is legal, valid and proper."

7. I have considered the submissions of learned Advocate for the petitioner as well as respondent. Though, in this case there are about six incidents to which Commissioner of Police, Ahmedabad city has made reference to. All these cases pertain to theft of vehicle, punishable under Section 379 of I.P.C. Therefore, narration of these facts cannot lead to the conclusion that the petitioner is a 'dangerous person'.

8. Thus, all these incidents reported or mentioned as the grounds of detention are not relevant to sustain the order of detention for the purpose of preventing petitioner so acting in any manner prejudicial to maintenance of public order. Therefore, there is no material on record which in its potentiality can show that the petitioner disturbed general peace and created sense of terror or insecurity or disturbed normal tempo of life in the locality. This ground is enough to quash and set aside the order of detention made by respondent in this behalf.

9. I have also placed reliance on judgment of this Court in S.C.A. 19852 of 2005 dated 15th November, 2005 in this behalf.

10. In view of the above reasoning, the detention order dated 13.09.2005 deserves to be quashed and set aside and is hereby quashed and set aside. Detenu is, therefore, ordered to be set at liberty forthwith if he is not required in connection with any other case by the authority. Rule made absolute to the aforesaid extent with no order as to costs. D.S. permitted.

(K.M.MEHTA, J.)

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